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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,629	01/14/2004	Mark James Kline	8194C	4664
27752 7590 08/02/2010 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
HAND, MELANIE JO				
ART UNIT		PAPER NUMBER		
3761				
MAIL DATE		DELIVERY MODE		
08/02/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/757,629

**Applicant(s)**

KLINE ET AL.

**Examiner**

MELANIE J. HAND

**Art Unit**

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 26 May 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,8-10 and 34-38 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,8-10,34-38 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/GS/US)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 26, 2010 has been entered.

### ***Response to Arguments***

2. Applicant's arguments with respect to claims 1 and 8-10 have been considered but are moot in view of the new ground(s) of rejection prompted by applicant's amendment to the claims.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1, 8-10 and 34-38 are rejected under 35 U.S.C. 102(e) as being anticipated by Kline et al (U.S. Patent No. 5,957,908).

The applied reference has a common inventor with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

With respect to **claim 1**: Kline discloses an article 20 to be worn about a wearer comprising: a surface fastening system on ear panels 62 and 64 necessarily having a primary direction of load bearing inasmuch as the system bears mechanical load during wear and during engagement and disengagement of the fastener components, the surface fastening system including a first surface fastening element 33 and a second surface fastening element carrying fasteners 30 or 31, the first fastening element 33 being joined to the article, the second fastening element 30/31 being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article (Figs. 2,7) , wherein an unjoined portion (namely the portion of the substrate carrying the fastener 30 that is not occupied by bonds 250) is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y extending substantially parallel to a longitudinal axis of the article, the unjoined dimension Y increasing from a laterally outboard edge of the element unjoined portion to a laterally inboard edge of the element unjoined portion inasmuch as unjoined areas are dispersed between rows of bonds 250 on the ear panels 62,64 and the lower edge of the ear panels slants downward

such that the longitudinal dimension of the panel and the unjoined areas, and thus the unjoined portion dimension Y increases from a laterally outboard edge of the element unjoined portion to a laterally inboard edge. (Fig. 7)

With respect to **claim 8**: The article 20 disclosed by Kline further comprises a chassis, containment assembly 22, and includes an absorbent member 28. (Fig. 4, Col. 5 lines 30-33)

With respect to **claim 9**: The article 20 disclosed by Kline is a diaper.

With respect to **claim 10**: As applicant has not defined the term "pant-like" the claim is given its broadest-reasonable interpretation. The article disclosed by Kline is adapted to form a pant-like article inasmuch as the article, when assembled on the wearer, forms leg and waist openings and can be pulled on and off like a training pant.

With respect to **claim 34**: The unjoined portion defined between bonds 250 includes a longitudinally inboard edge of the second fastening element. (Fig. 7)

With respect to **claim 35**: As can be seen in Fig. 7, an overall shape of the unjoined portion, especially at the longitudinally inboard edge of ear panels 62,64 and extending up to the first rows of bonds 250, is triangular.

With respect to **claim 36**: The second fastening element is joined to a carrier web inasmuch as ear panels 62 and 64 are formed by a laminate and at least a portion of the carrier web, namely

the portion outboard of the outer edges of sheets 24 and 26 (see Fig. 5) is unjoined from the underlying structure of the article.

With respect to **claims 37,38**: Kline discloses that the ear panels may be a laminate of coverstock materials as disclosed for the topsheet or backsheet (e.g. polyethylene) and an elastomeric film, both of which are extensible. Thus, regardless of which material forms the carrier web, at least a portion of the carrier web is necessarily extensible. (Col. 15, lines 29-35)

5. Claims 1, 8-10 and 34-38 are rejected under 35 U.S.C. 102(a) as being anticipated by Kline et al ('908).

With respect to **claim 1**: Kline discloses an article 20 to be worn about a wearer comprising: a surface fastening system on ear panels 62 and 64 necessarily having a primary direction of load bearing inasmuch as the system bears mechanical load during wear and during engagement and disengagement of the fastener components, the surface fastening system including a first surface fastening element 33 and a second surface fastening element carrying fasteners 30 or 31, the first fastening element 33 being joined to the article, the second fastening element 30/31 being disposed so as to be generally in a face to face relationship with the first fastening element when the surface fastening system is in an engaged configuration to fasten at least a portion of the article (Figs. 2,7) , wherein an unjoined portion (namely the portion of the substrate carrying the fastener 30 that is not occupied by bonds 250) is unjoined from an underlying structure of the article, the unjoined portion including an unjoined dimension Y extending substantially parallel to a longitudinal axis of the article, the unjoined dimension Y increasing from a laterally outboard edge of the element unjoined portion to a laterally inboard

edge of the element unjoined portion inasmuch as unjoined areas are dispersed between rows of bonds 250 on the ear panels 62,64 and the lower edge of the ear panels slants downward such that the longitudinal dimension of the panel and the unjoined areas, and thus the unjoined portion dimension Y increases from a laterally outboard edge of the element unjoined portion to a laterally inboard edge. (Fig. 7)

With respect to **claim 8**: The article 20 disclosed by Kline further comprises a chassis, containment assembly 22, and includes an absorbent member 28. (Fig. 4, Col. 5 lines 30-33)

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With respect to **claim 35**: As can be seen in Fig. 7, an overall shape of the unjoined portion, especially at the longitudinally inboard edge of ear panels 62,64 and extending up to the first rows of bonds 250, is triangular.

With respect to **claim 36**: The second fastening element is joined to a carrier web inasmuch as

ear panels 62 and 64 are formed by a laminate and at least a portion of the carrier web, namely the portion outboard of the outer edges of sheets 24 and 26 (see Fig. 5) is unjoined from the underlying structure of the article.

With respect to **claims 37,38**: Kline discloses that the ear panels may be a laminate of coverstock materials as disclosed for the topsheet or backsheet (e.g. polyethylene) and an elastomeric film, both of which are extensible. Thus, regardless of which material forms the carrier web, at least a portion of the carrier web is necessarily extensible. (Col. 15, lines 29-35)

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



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Art Unit: 3761

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/Melanie J Hand/  
Primary Examiner, Art Unit 3761